

IN THE INCOME TAX APPELLATE TRIBUNAL ALLAHABAD "SMC"
BENCH, ALLAHABAD

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.14/Alld/2023
(निर्धारण वर्ष / Assessment Year: 2009-10)

Keshav Deo Tripathi 74-A/5, Pura Dalel, Allahabad, Allahabad- 211002.	<u>बनाम/</u> Vs.	ITO, Ward-1(2) 38, M. G. Marg, Allahabad, Uttar Pradesh- 211001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABUPT7287K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Utkarsh Gupta	
Revenue by:	Shri A. K. Singh (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 06/09/2023
घोषणा की तारीख /Date of Pronouncement: 11/09/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 16.12.2022 for AY. 2009-10.

2. At the outset, the Ld. AR of the assessee pointed out that the impugned order of the Ld. CIT(A)/NFAC is an *ex-parte* order and therefore prayed that assessee be given an opportunity of hearing before the Ld. CIT(A).

3. Regarding the aforesaid contention of the Ld. AR of the assessee, it is noted that the Ld. CIT(A) in the impugned order at para no. 5.1 has noted to have issued notices on four (4) occasions (*one date has been repeated*) between 30.12.2020 to 08.12.2022. And taking note that the assessee failed to file any response, he was pleased to confirm the action of the AO. According to the Ld. AR, the assessee



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did not receive the notices issued on 30.12.2020, 02.09.2022, 25.11.2022 and on 08.12.2022. And therefore, could not reply to the queries raised by the Ld. CIT(A). According to Ld AR, the assessee was not techno-savvy and was not aware of the intricacies of uploading the relevant documents/material/explanation in the department portal. Moreover, according to him, the faceless First Appellate Proceedings has started recently, and therefore, the assessee could not keep track of the proceedings going on before the First Appellate Authority and resultantly could not file the relevant documents/explanation and resultantly the impugned order has been passed *ex-parte* by the Ld. CIT(A) dismissing the appeal. According to the Ld. AR, for the interest of justice and fair play, the assessee be given one more opportunity to place its case before the First Appellate Authority.

4. Per contra, the Ld. DR opposes the second inning as requested by the assessee.

5. Having heard both the parties and after perusal of the records, it is noted that the Ld. CIT(A) at para no. 5.1 of his order has recorded that notices were issued on 30.12.2020, 02.09.2022, 25.11.2022 and 08.12.2022; and since the assessee did not file any response to his queries/notices, he was pleased to confirm the action of the AO by passing the impugned order on 16.12.2022. The assessee is aggrieved by the action of the Ld. CIT(A) passing the *ex-parte* order *qua* him. No proof of service of notices are evident from perusal of the impugned



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order, and the averment of assessee is that he didn't receive the notices issued as stated by Ld. CIT(A) at para no. 5.1 of his order. After considering the fact that assessee was not techno-savvy, as well as the fact that the professionals are getting used to recent change brought in from physical to digital/faceless proceedings [before First Appellate Authority] and considering the technical glitches in such proceedings; and the assessee's inability to upload relevant documents/explanation as well as non-mention of service of notices (*to which email id etc*), I am of the view that Ld CIT(A) erred in passing ex-parte order and therefore there was violation of natural justice. The Ld. AR before me has undertaken to diligently participate in the proceedings before Ld CIT(A) and also file written submission/relevant documents to substantiate the grounds of appeal raised before the First Appellate Authority. Therefore, I am inclined to set aside the impugned order of the Ld. CIT(A) and restore the appeal back to his file for fresh adjudication. And the Ld. CIT(A) to decide the appeal on merits of the appeal as per section 250(6) of the Income Tax Act, 1961, in accordance to law.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 11/09/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Allahabad दिनांक Dated : 11/09/2023.
Vijay Pal Singh, (Sr. PS)



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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order
Assistant Registrar